

# REPORT

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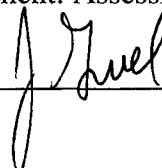
**DATE:** July 7, 2005

**TO:** The Energy and Environment Committee (EEC)

**FROM:** Charlotte Pienkos, Government Affairs Analyst  
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**SUBJECT:** ACA 13 (Harman) Local Government: Assessments

**EXECUTIVE DIRECTOR'S APPROVAL**



**RECOMMENDED ACTION:** Support

## **SUMMARY:**

If passed by a majority of voters, Assembly Constitutional Amendment 13, introduced by Assemblymember Tom Harman (R-Huntington Beach), would exempt stormwater and flood control fees from the voter requirements of Proposition 218. Prop. 218 required voter approval of all local fees except for those related to sewer, water, and refuse collection services. ACA 13 would give stormwater and flood management programs the same exemption. The Water Policy Task Force considered ACA 13 at its June 9<sup>th</sup> meeting and recommends to the EEC a support position given its capability to assist cities and counties in funding these programs.

## **BACKGROUND:**

Assemblymember Harman introduced ACA 13 on February 22<sup>nd</sup>. The constitutional amendment broadens the class of exempted local services from the Proposition 218 requirement. According to the California Constitution, only the fees for sewer, water and refuse collection services may be imposed or increased without a majority vote of the property owners of property subject to the charge or in some cases by a 2/3 vote of the electorate residing in the affected area.

ACA 13 amends the Constitution to state that voter approval for new or increased fees or charges for sewer, water, refuse collection services, or "fees or charges related to flood control, stormwater drainage, or surface water drainage" are not subject to voter approval.

ACA 13 is the reintroduction of last year's ACA 10, a measure that failed in the Assembly by a narrow margin. Its passage would assist cities and counties raise money to pay for total maximum daily load (TMDL) costs. Although a general bond measure was considered in lieu of this Prop. 218 exemption, a general obligation bond cannot be used for operations and maintenance, which is a necessity in this situation. Governor Schwarzenegger is supportive of ACA 13, as is the broader environmental community.

## **SUPPORT:**

The following agencies support ACA 13

- The League of California Cities
- Heal the Bay

## **OPPOSE:**

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The following agencies oppose ACA 13

- Howard Jarvis Taxpayers Association

**BILL STATUS:**

ACA 13 is in the Assembly Local Government Committee.

**FISCAL IMPACT:** *HC*

All work related to adopting the recommended staff action is contained within the adopted FY05/06 budget and adopted 2005 SCAG Legislative Program and does not require the allocation of any additional financial resources.

CP#111436



**SOUTHERN CALIFORNIA  
ASSOCIATION of GOVERNMENTS**

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**Assembly Constitutional Amendment**

**No. 13**

**Introduced by Assembly Members Harman, Jones, and Mullin**

February 22, 2005

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Assembly Constitutional Amendment No. 13—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending ~~Sections 2 and 5 of Section 5 of, and subdivision (c) of Section 6 of,~~ Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 13, as amended, Harman. Local government: assessments and fees or charges.

~~The~~

(1) *The California Constitution conditions the imposition or increase of an assessment by a city, county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, except that. The California Constitution exempts the imposition of a flood control assessment existing on November 6, 1996, is not subject to from these requirements. The*

*This measure would instead exempt from these requirements an assessment for the purposes of financing the capital costs or maintenance and operation expenses of flood control, whether the assessment existed on November 6, 1996, or is imposed after that date.*

(2) *The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge by a city,*

county, or special district for flood control purposes upon compliance with requirements for written notice to property owners, a public hearing, and an opportunity for majority protest, and upon the approval by a majority vote of the property owners of the property subject to the fee or charge, or at the option of the entity imposing the fee or charge, by a  $\frac{2}{3}$  vote of the electorate residing in the area affected by the fee or charge.

This measure would ~~also exclude from these requirements any levy for these property owner and voter approval requirements a fee or charge related to flood control purposes, stormwater drainage, or surface water drainage.~~

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

1     *Resolved by the Assembly, the Senate concurring,* That the  
2     Legislature of the State of California at its 2005-06 Regular  
3     Session commencing on the sixth day of December 2004,  
4     two-thirds of the membership of each house concurring, hereby  
5     proposes to the people of the State of California, that the  
6     Constitution of the State be amended as follows:

7     ~~First—That Section 2 of Article XIII D thereof is amended to~~  
8     ~~read:~~

9     ~~SEC. 2. As used in this article:~~

10    ~~(a) "Agency" means any local government as defined in~~  
11    ~~subdivision (b) of Section 1 of Article XIII C.~~

12    ~~(b) "Assessment" means any levy or charge upon real property~~  
13    ~~by an agency for a special benefit conferred upon the real~~  
14    ~~property. "Assessment" includes, but is not limited to, "special~~  
15    ~~assessment," "benefit assessment," "maintenance assessment"~~  
16    ~~and "special assessment tax." "Assessment" does not include any~~  
17    ~~levy imposed for the purposes of flood control, including a levy~~  
18    ~~imposed to finance capital costs or maintenance and operation~~  
19    ~~expenses for flood control.~~

20    ~~(c) "Capital cost" means the cost of acquisition, installation,~~  
21    ~~construction, reconstruction, or replacement of a permanent~~  
22    ~~public improvement by an agency.~~

23    ~~(d) "District" means an area determined by an agency to~~  
24    ~~contain all parcels which will receive a special benefit from a~~  
25    ~~proposed public improvement or property-related service.~~

1 ~~(c) "Fee" or "charge" means any levy other than an ad~~  
2 ~~valorem tax, a special tax, or an assessment, imposed by an~~  
3 ~~agency upon a parcel or upon a person as an incident of property~~  
4 ~~ownership, including a user fee or charge for a property related~~  
5 ~~service. "Fee" or "charge" does not include any levy imposed for~~  
6 ~~the purposes of flood control, including a levy imposed to~~  
7 ~~finance capital costs or maintenance and operation expenses for~~  
8 ~~flood control.~~

9 ~~(f) "Maintenance and operation expenses" means the cost of~~  
10 ~~rent, repair, replacement, rehabilitation, fuel, power, electrical~~  
11 ~~current, care, and supervision necessary to properly operate and~~  
12 ~~maintain a permanent public improvement.~~

13 ~~(g) "Property ownership" shall be deemed to include tenancies~~  
14 ~~of real property where tenants are directly liable to pay the~~  
15 ~~assessment, fee, or charge in question.~~

16 ~~(h) "Property-related service" means a public service having a~~  
17 ~~direct relationship to property ownership.~~

18 ~~(i) "Special benefit" means a particular and distinct benefit~~  
19 ~~over and above general benefits conferred on real property~~  
20 ~~located in the district or to the public at large. General~~  
21 ~~enhancement of property value does not constitute "special~~  
22 ~~benefit."~~

23 ~~Second~~

24 ~~First—That Section 5 of Article XIII D thereof is amended to~~  
25 ~~read:~~

26 SEC. 5. Pursuant to subdivision (a) of Section 10 of Article  
27 II, the provisions of this article shall become effective the day  
28 after the election unless otherwise provided. Beginning July 1,  
29 1997, all existing, new, or increased assessments shall comply  
30 with this article. Notwithstanding the foregoing, *an assessment*  
31 *for the purposes of financing the capital costs or maintenance*  
32 *and operation expenses of flood control, whether the assessment*  
33 *existed on November 6, 1996, or is imposed after that date, and*  
34 *the following assessments existing on the effective date of this*  
35 *article November 6, 1996, shall be exempt from the procedures*  
36 *and approval process set forth in Section 4:*

37 (a) Any assessment imposed exclusively to finance the capital  
38 costs or maintenance and operation expenses for sidewalks,  
39 streets, sewers, water, drainage systems, or vector control.

1 Subsequent increases in those assessments shall be subject to the  
2 procedures and approval process set forth in Section 4.

3 (b) Any assessment imposed pursuant to a petition signed by  
4 the persons owning all of the parcels subject to the assessment at  
5 the time the assessment is initially imposed. Subsequent  
6 increases in those assessments shall be subject to the procedures  
7 and approval process set forth in Section 4.

8 (c) Any assessment the proceeds of which are exclusively used  
9 to repay bonded indebtedness of which the failure to pay would  
10 violate the Contract Impairment Clause of the Constitution of the  
11 United States.

12 (d) Any assessment which previously received majority voter  
13 approval from the voters voting in an election on the issue of the  
14 assessment. Subsequent increases in those assessments shall be  
15 subject to the procedures and approval process set forth in  
16 Section 4.

17 *Second —That subdivision (c) of Section 6 of Article XIII D*  
18 *thereof is amended to read:*

19 (c) Voter Approval for New or Increased Fees and Charges.  
20 Except for fees or charges for sewer, water, ~~and~~ or refuse  
21 collection services, *or fees or charges related to flood control,*  
22 *stormwater drainage, or surface water drainage,* no property  
23 related fee or charge shall be imposed or increased unless and  
24 until that fee or charge is submitted and approved by a majority  
25 vote of the property owners of the property subject to the fee or  
26 charge or, at the option of the agency, by a two-thirds vote of the  
27 electorate residing in the affected area. The election shall be  
28 conducted not less than 45 days after the public hearing. An  
29 agency may adopt procedures similar to those for increases in  
30 assessments in the conduct of elections under this subdivision.

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